

9-0900-8240-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Application
of Life Link III, St. Paul, Minnesota,
EMS License No. 359 to Change their
Current Schedule of Operations to
Include a Substation for Ground
Services in Willmar, Minnesota to
their Current Advanced Ambulance-
Specialized License

FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha at 7 p.m. on October 14, 1993 at Willmar Municipal Utilities Building, 700 Litchfield Avenue Southwest, Willmar, Minnesota. The record in this matter closed on November 10, 1993, upon receipt of the hearing transcript.

Andrew Kirchoff, Chief Executive Officer and President of Life Link III (hereinafter referred to as "the Applicant") and Gary Windgrove, Director of Communications and Ground Ambulance Services, 336 Chester Street, St. Paul, Minnesota 55107, appeared on the Applicant's behalf without benefit of counsel.

No one intervened or appeared in opposition to the application. Approximately 20 people attended the public hearing.

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mary Jo O'Brien, Commissioner, Minnesota Department of Health, 717 Delaware Street Southeast, P.O. Box 9441, Minneapolis, Minnesota 55440-9440, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this proceeding is whether the application of Life Link III to change their current schedule of operations to include a substation for grounds services in Willmar, Minnesota to their current advanced ambulance-specialized license should be granted based upon the criteria set forth in Minn. Stat. § 144.802, subd. 3(g) (1992).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background_and_Procedural_History

1. Life Link III was originally a for-profit, privately held company called Biomedical Research Associates (BMRA). Beginning in the mid-1970's, BMRA provided clinical monitoring and intra-aortic balloon pumping services to Twin City area hospitals. Thereafter, a need developed a move these critically ill patients on the specialized equipment between hospitals. BMRA then began providing ambulance services transferring patients on the equipment between hospitals.

2. BMRA was first licensed as an ambulance service in 1976. BMRA was the only provider of ground-based mobile intensive care in Minnesota for the past 17 years. To date, its successor, Life Link III, is the only licensed state-wide ground ambulance.

3. In 1985, Abbott-Northwestern Hospital and the University of Minnesota Hospital and Clinic in Minneapolis, and St. Paul-Ramsey Medical Center in St. Paul purchased BMRA. The new agency created became Life Link III. Life Link III is a not-for-profit provider of ambulance, helicopter and airplane mobile intensive care. Since the original three hospitals formed the Life Link III consortium, Minneapolis Childrens Medical Center and St. Luke's Hospital of Duluth have joined.

4. Life Link III maintains a base of operations on and near the downtown St. Paul Airport.

1. Helicopter Division - Life Link III serves Minnesota, Wisconsin, Northern Iowa and the upper peninsula of Michigan with three helicopters. Two are at Holman Field in St. Paul and the third is at Bong Field in Superior, Wisconsin.

2. Airplane Division - Life Link III serves the United States and Canada with two dedicated airplanes at Holman

Field in St. Paul.

3. Hospital Services Division - The Hospital Services Division serves hospitals in Wisconsin and Minnesota with the same specialized surgical procedures on which BMRA was founded. A few years ago they added intra-operative cell saving to its list of services. This cell saver procedure allows the company to collect the patient's own blood during trauma and other high blood loss surgeries. The patient's blood is spun and washed to remove debris and dead cells, and the patient receives his or her blood back.

4. Clinical Support Services Division - Life Link III operates a clinical support services division that provides education, research, information management, and continuous quality improvement services for the entire company.

5. Ambulance Division - Life Link III serves the states of Minnesota and Wisconsin with four mobile intensive care ambulances based at 336 Chester Street, in St. Paul, Minnesota.

5. On about August 19, 1993, Life Link III filed an application with the Minnesota Department of Health to change their current schedule of operations to include a substation for ground services in Willmar, Minnesota to their current advanced ambulance-specialized license. (Ex. 1).

6. On September 7, 1993, the Commissioner of Health issued a Notice of Completed Application and Notice of and Order for Hearing setting a hearing date in this matter of October 14, 1993. (Ex. 2).

7. The Notice of Hearing was published in the State Register on September 7, 1993 at 185.R.792 (Ex. 3). Notice was also published in the West Central Tribune, Willmar, Minnesota, a newspaper in the municipality in which the base of operation will be located, on two occasions, once the week of September 13, 1993 and the week of September 20, 1993. (Ex. 4). Notice was also published in the St. Paul Legal Ledger twice, once the week of September 13, 1993 and again the week of September 20, 1993. (Ex. 5). The notice provided meets the requirements of Minn. Stat. § 144.802, subd. 3.

8. Notice of the hearing was also served upon the county boards of all counties in Minnesota; all community health boards in Minnesota; all EMS regions in Minnesota; all ambulance services in Minnesota; and the mayors of the Cities of St. Paul and Willmar, Minnesota. (A mailing list of persons notified of the application is attached to Ex. 2). The notice meets the requirements of Minn. Stat. § 144.802, subd. 3(c).

9. Persons wishing to intervene as a party were notified that they could do so pursuant to Minn. Rules, pt. 1400.6200 on or before September 28, 1993. No one filed a petition to intervene as a party in this matter.

10. Any person could also submit written recommendations for the

disposition of the application on or before October 7, 1993. No person submitted a recommendation prior to October 7, 1993. Interested persons were also provided 20 days following the conclusion of the hearing to submit written comments regarding the disposition of the application. Prior to the close of the 20-day comment period, the Administrative Law Judge received comments, one from Central Minnesota Emergency Medical Council (CMECS). CMECS Council Board of Directors voted unanimously on October 21, 1993 to inform the Administrative Law Judge that it does not support Life Link III's application "because of an apparent d

Description_of_Current_Ambulance_Service_in_Minnesota

11. Basic life support (BLS) is a prehospital transport system that is capable of providing basic level ambulance services. Typical treatments performed include oxygen therapy, suctioning, splinting, CPR, and bandaging. An emergency medical technician (EMT) is a primary caregiver. This level of service for 911 response is most prevalent in rural areas. The initial certification program for EMTs is approximately 110 hours.

12. Intermediate life support (BLS-I) is a prehospital transport system that includes intermediate level procedures such as advanced airway control, starting and maintaining IV's in trauma cases, and may include automatic or semi-automatic defibrillation. Most EMT-intermediates have achieved basic trauma life support (BTLS) certification. Generally, EMT-I services for 911 responses are in smaller cities with active volunteer or full-time ambulance companies. The initial certification program for EMT-I's is approximately 170 hours. The Willmar Ambulance Service in an intermediate service providing 911 and inter-facility transportation in and around the City of Willmar.

13. Advanced Life Support (ALS) is a prehospital transport system that is capable of providing endotracheal intubation and other advanced airway procedures, pharmaceutical support through intravenous and intratracheal emergency medications, and cardiac defibrillation. A paramedic is a primary caregiver. Initial certification programs range in length from six months to four years. 911 responses are the primary focus for ALS services. The closest ALS services to Willmar are in Alexandria and St. Cloud, and hour or more away.

14. Mobile intensive care unit (MICU) is an inter-facility transport system, air and/or ground, that is capable of providing advanced assessment skills and complex interventions such as vasoactive drug therapies, ventilators, invasive or noninvasive cardiac pacing, invasive hemodynamic monitoring, intro-aortic balloon pumping and advanced interpretation of blood values, EKGs, and other diagnostic tests. MICU services use an intensive care nurse or a physician as the primary care provider and are generally available only in large cities. Life Link III is the only licensed ground based provider

of mobile intensive care in Minnesota, and is located two and one half hours away by ground, and forty minutes by air.

15. Currently, when a rural community hospital does not have the capabilities to treat seriously ill or injured patients, those patients must be transported to other hospitals that can provide life support measures. In Minnesota most of these transports are to large metropolitan hospitals that have the capability to provide necessary treatment. Hospital-to-hospital transfers in Willmar and the southwest Minnesota area are completed in one of several ways. Transports are done by the local ambulance when appropriate to the license level of the ambulance service. In Willmar and southwest Minnesota, when a patient is in need of advanced life support transport, a registered nurse from the local hospital will accompany the patient in the community ambulance; or, Life Link III (the only licensed ground-based provider of mobile intensive care in Minnesota) will dispatch an ambulance from St. Paul; or most commonly, the patient is transported by helicopter. For mobile intensive care patients, that are not transported in MICU, a nurse or a physician accompanies the patient.

16. Given the lack of mobile intensive care in Willmar the southwest Minnesota region, physicians often face difficult decisions on how to best use their limited resources. Also, bad weather preventing airplane or helicopter flight poses a difficult choice for the physician. There are times when a physician has to decide if: a) he or she should go on a transport and leave the community without a physician for several hours; b) he or she should send the only available nurse who m

17. Most helicopter service is based in the Metropolitan Twin Cities area. Helicopters routinely provide service to areas up to 150 nautical miles from tertiary care center bases of operation. The approximate cost of helicopter transport is \$4,500. (Tr. p. 20). The average patient charge for ALS with a ground based MICU is estimated to be \$1,215. (Ex. 1, Item 18).

Description_of_the_Proposed_Service

18. The Applicant seeks to establish a ground based mobile intensive care unit at the Rice Memorial Hospital in Willmar, Minnesota. The Rice Memorial Hospital Board of Directors supports Life Link III's application and has worked together with the Applicant in developing its proposed project. (Ex. 13). The applicant also worked together with the Willmar Ambulance Service which has operated four vehicles out of the Rice Memorial Hospital. These vehicles performed both 911 and interhospital transports. Life Link III will lease a new vehicle from the City on a per-use basis that will actually constitute the fifth vehicle in the Willmar Ambulance's fleet. The MICU vehicle used during hospital transports will be separate and distinct from the rest of the ambulance fleet. The City of Willmar also supports the application of Life

Link III to establish a ground based MICU at the Rice Memorial Hospital.
(Ex.
18).

19. Establishing a ground-based mobile intensive care unit in Willmar will provide the following:

- (1) Improved patient care during interfacility ground transports;
- (2) Increased availability of local rural ambulances for 911 response as they will not be tied up on lengthy transfers to the metro area;
- (3) Assure the appropriate mode of transport utilization to provide high quality cost effective patient care, (BLS versus ALS versus MICU versus helicopter);
- (4) Provide rural physicians with the means to comply with Federal COBRA regulations as related to patient transport; and
- (5) Decrease morbidity and mortality resulting from service illness and/or injury by improving the access to MICU transport and decreasing health care costs by transporting patients by the most medically appropriate means.

20. Life Link III will hire experienced emergency room or ICU nurses from the Willmar area and supplement their experience with 79 hours of additional classroom education, 48 hours of certification programs, and 62 hours of clinical preceptorship time. For the preceptor program, the nurses will be trained at the Applicant's St. Paul base of operations and will ride with experienced crews on every available run to obtain the maximum transport experience. They will be required to comply with the same continuing education requirements as the Applicant's metro based personnel.

21. The mobile intensive care used during hospital transports will be separate and distinct from the four vehicles used by the Willmar Ambulance Service for 911 and interhospital transports. Because Willmar Ambulance's current fleet will no longer be required to handle interhospital transports, all four of its vehicles will be available for 911 runs. The Willmar Ambulance Service EMTs used for the interhospital transport will be on a separate call roster from the 911 EMTs. Accordingly, there will be increased availability of local rural ambulances for 911 response.

22. Representatives from the Applicant, the Rice Memorial Hospital, and the Willmar Ambulance Service traveled throughout southwestern Minnesota area to meet with other community hospitals and ambulance services which will be in the service territory of the MICU ground services if this application is granted by the Department. They participated in meetings with southwest Minnesota EMS Corporation, the Yellow Medicine and Chippewa County area

services, the Kandiyohi County Ambulance Service, the Appleton are

23. Representatives from southwest Minnesota hospitals, clinics, nursing homes, medical centers, and health care systems have written letters supporting the proposed application: Weiner Memorial Medical Center, Marshall, Minnesota (Ex. 7); Swift County Benson-Hospital, Benson, Minnesota (Ex. 8); Meeker County Memorial Hospital, Litchfield, Minnesota (Ex. 9); Granite Falls Municipal Hospital, Granite Falls, Minnesota (Ex. 10); Paynesville Area Healthcare Systems (Ex. 11); Appleton Municipal Hospital and Nursing Home (Ex. 12); Rice Memorial Hospital, Willmar, Minnesota (Ex. 13); Family Practice Medical Center of Willmar, Minnesota (Ex. 14); Affiliated Medical Centers, P.A. operating clinic in Atwater, Benson, Hancock, Litchfield, Marshall, New London, Redwood Falls, and Willmar (Ex. 15); and Kandiyohi County Community Health Service (Ex. 19).

24. The Applicant expects over 95% of its runs will occur within a 60-mile radius of Willmar, Minnesota. The approximate population of residents and visitors in its primary service area is estimated at 17,500 for residents and 5,250 for visitors. These figures are for the City of Willmar only. The Applicant expects 250 specialized advanced ambulance runs for the first year of operation. It estimates its total operating revenue from all sources for the next year to be \$303,750 of which 80% will be received from third-party payments (Medicare, Medicaid, private insurance), and 20% from direct patient payment. The expected average patient charge for the first calendar year of operation is estimated to be \$1,215. Total annual expenses are estimated for the first year of operations at \$278,453. (Ex. 1, Items 12-19).

25. In 1986, the Congress enacted the Consolidated Budget Reconciliation Act (COBRA). One of the provisions of COBRA requires a physician to consult with the staff of hospital and receive a confirmation of bed availability and of specialist acceptance of the patient prior to the transport of a patient to another hospital. In addition, the physician is required to assure the patient has the appropriate level of care during transport. If the patient's condition deteriorates during the transfer because appropriate staff and equipment were not utilized, the hospital and physician can be subject to significant fines and/or the termination from participation in the Medicare program. The availability of a critical care ambulance on site in Willmar will assist Willmar and surrounding area physicians to meet COBRA requirements. (Tr. p. 42 and 57).

Relationship_to_Community_Health_Plan

26. The Kandiyohi County Community Health Plan does not specifically

address any increased level of ambulance service, rather only addresses continuing education needs of the county ambulance and first responder services. Life Link III has been providing continuing education for the Willmar Ambulance Service over the last six months prior to the hearing. Willmar Ambulance Service employees (EMTs and EMT-Is) and nurses will be able to attend the appropriate training modules for the nurses operating at the new Willmar base if the application is approved by the Department. The Kandiyohi Community Health Service submitted a letter indicating its support for the approval of its application. (Ex. 19).

Comments_of_Governing_Bodies_and_Public_Officials

27. Dean Elton Johnson; Senate Minority Leader, Senate District 15 of the State of Minnesota wrote a letter supporting and encouraging the application; ". . . a critical care ground service in Willmar will provide a great service to southwestern Minnesota as well as provide a number of benefits to the area. First, and foremost, it will improve patient care by providing a higher level of service to the residents of the region. This grant will also allow critical care access to be administered in a more cost effective manner. By providing this service the need for very expensive helicopter transports will be reduced resulting in lower costs to the

28. Allen Welle, State Representative, District 15A, Kandiyohi County wrote a letter supporting the license application: ". . . Critical care ground service in the Willmar area will benefit southwestern Minnesota and improve patient care as well. Reforms in health care in the state of Minnesota is coming to full fruition and I believe your services could result in low costs to health care. . ." (Ex. 17).

29. Richard C. Hoglund, Mayor of the City of Willmar wrote a letter supporting the application of Life Link III: ". . . establishing a critical care ground service in Willmar will provide a beneficial service to southwestern Minnesota as well as providing benefits to this area. The improved patient care is beneficial to the residents of the region by providing this higher level service." (Ex. 18).

30. Dan Strootman, acting chief of police of the City of Willmar testified in support of the application: ". . . I would just like to state on behalf of the City of Willmar, that the City is committed to this endeavor. . . my position as the administrator of the ambulance service is that the City of Willmar is committed financially to this program because we feel it will result in quality care for all of our constituents and I believe that that is our primary purpose. . ." (Tr. 60).

Deleterious_Effects_on_the_Public_Health_From_Duplication_of_Ambulance_Services

31. Other than Life Link III, there are no advanced providers in the proposed primary service area. Life Link III is already licensed to provide specialized ambulance service in the entire area from their St. Paul based station (License 359). The Applicant expects a level of participation in its proposed project varying widely from community to community. Some communities have a small number of volunteer EMTs and a small number of available nurses to go on transports. Participation from these communities is expected to be substantial. However, some of the cities within the 60-mile radius surrounding Willmar already have strong ambulance services and hospitals. For example, Litchfield and Montivideo have sufficient local nurses to accompany patients on BLS transports. (Tr. p. 39, 65-66).

32. The Central Minnesota Emergency Medical Services Council submitted comments opposing Life Link III's application "because of an apparent duplication of services. Furthermore, the Board stated they do not support encroachment of any primary service areas." (Post-Hearing Ex. 1).

33. Substantial expense is required to ensure that local ambulance services are available at all times of the day for medical emergencies. Oftentimes there is little ability to predict demand for emergency services and the cost of having resources available is very high. One method for ambulance services to reduce these costs is to build a scheduled, non-emergency transfer business. Thus, some local ambulance services support themselves by performing interhospital transports of non-time-sensitive patients. Several ambulance services expressed concern that if the application is granted it would result in lost revenues.

34. No ambulance service intervened as a party in this proceeding. Insufficient evidence was provided on which to base a finding that any ambulance service would be substantially harmed if the application of Life Link III is granted.

Estimated_Effect_on_the_Public_Health

35. The availability of a ground mobile intensive care ambulance in the Willmar area will benefit the level of public health in the area because it will improve patient care during interfacility ground transports. The applicant will staff specially trained advanced level personnel, including paramedics or RNs and EMTs for patients in need of critical care. The RNs hired and trained by the Applicant will be scheduled on call and will continue to work part time or full time in area hospitals. Accordingly, the hospitals and patients will benefit by not only having a higher skill lev

36. Rapid access to advanced life support measures and definitive

modalities is a key determining factor in the outcome of people suffering from serious illness or injury. The clock starts ticking at the time of injury or onset of acute illness or injury. The availability of emergency medical services stationed at the Willmar Hospital available to transport patients to tertiary care centers will provide a clear public health benefit as there will be immediate access and reduced response time for the transportation of critical care patients.

37. The availability of an extra ambulance with MICU capability in Willmar will increase the availability of local rural ambulances for 911 response. Thus the availability of an extra ambulance in the area will have a positive public health benefit in the primary service area than that which is now available.

38. Typically the costs for ground transports are 1/4 to 1/3 that of a helicopter transport. For the transport of non-time-sensitive, critical care patients; ground transport is more appropriate than a helicopter when a quality, highly skilled MICU team is available. Ground transportation will also be a benefit to the area in cases of bad weather when a helicopter isn't able to fly. Thus, access to MICU transport will decrease healthcare costs by transporting patients by the most medically appropriate means.

39. Availability of MICU transport in the Willmar area will assist rural physicians with the means of complying with COBRA regulations as it relates to patient transport.

Benefit_to_Public_Health_Versus_Cost_of_the_Proposed_Service

40. Currently, when hospitals send an RN with a BLS ambulance, there are a number of hidden costs. The BLS ambulance is only able to bill BLS charges due to licensure. The hospitals are absorbing the cost of an overtime or double-time RN to attend to patient care needs. The Applicant estimates the "true cost" of a transfer from Willmar to the Twin Cities by ground at \$850 to \$1,000. The Applicant has filed grant applications and hopes to obtain charitable donations so that it will be able to provide ambulance service at an average patient charge of \$1,000 to \$1,215. Patients with more complex needs will be at the high end, and patients with less complex needs will be at the low end of that range. Thus, patients will receive a higher level of care for approximately the same cost.

41. Because helicopter transport, which is now primarily used for critical care transport to the Twin Cities, is significantly higher (estimated at \$4,500 per patient) than ground transport, there will be a cost savings of at least \$2,000 to \$3,000 for each patient that will not travel by helicopter in the future. Thus, granting the application will provide the option of a

less expensive transport system with a higher level of care than currently available.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 144.802 (1992). The Notice of Hearing was proper in all respects in all procedural and substantive requirements of law and rule have been fulfilled.

2. Minn. Stat. § 144.802, subd. 3(g) (1990) provides:

The administrative law judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receipt of the notice of the application. In making the recommendations, the administrative law judge shall consider and make written comments as to whether the proposed service . . . is needed, based on consideration of the following factors:

(1) The relationship of the proposed service, change in base operations or expansion i

(2) The recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) The deleterious effect on the public health from duplication, if any, of ambulance services that would result from granting the license;

(4) The estimated effect of the proposed service, change in base of operation or expansion in primary service area on the public health;

(5) Whether any benefit accruing to the public health would outweigh the costs associated with the proposed service, change in base of operations, or expansion in primary service area.

The administrative law judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. . .

3. The burden of proof to show that the license should be granted is on the applicant. North Memorial Medical Center v. Minnesota Department of Health, 423 N.W.2d 737, 739 (Minn. Ct. App. 1988); In Re City of White Bear Lake, 311 Minn. 146, 150, 247 N.W.2d 901, 904 (1976).

4. After due consideration of all the factors enumerated in the above-

quoted statutory provision, the Administrative Law Judge concludes that the Applicant has met the statutory criteria and that its application should be granted.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Health GRANT the application of Life Link III, St. Paul, Minnesota, EMS License No. 359, to change their current schedule of operations to include a substation for ground services in Willmar, Minnesota to their current advanced-ambulance specialized license.

Dated this 6th day of December, 1993.

/s/_Phyllis_A._Reha_____

PHYLLIS A. REHA
Administrative Law Judge